

1 JOHN S. WORDEN
2 VENABLE LLP
3 101 California Street, Suite 3800
4 San Francisco, CA 94111
5 Telephone: 415-653-3750
6 Facsimile: 415-653-3755
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8 Attorneys for Plaintiffs
9 CURRAX PHARMACEUTICALS LLC and NALPROPION
10 PHARMACEUTICALS LLC

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CURRAX PHARMACEUTICALS LLC
and NALPROPION
PHARMACEUTICALS LLC
Plaintiffs,

v.

FOUND HEALTH INC. f/k/a TORCH RX
Defendant.

Case No. 3:23-CV-0977

COMPLAINT

DEMAND FOR JURY TRIAL

Date:

Trial Date:

Plaintiffs, Currax Pharmaceuticals LLC (“Currax”) and Nalpropion Pharmaceuticals LLC (“Nalpropion”) (collectively, Plaintiffs), for their Complaint against Defendant Found Health Inc. f/k/a Torch Rx (“Defendant” or “Found”), hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action challenging Found’s false designation of origin, false advertising, trademark infringement, and unfair competition. Plaintiffs seek damages and injunctive relief for Defendant’s willful infringement of Plaintiffs’ federally registered trademarks in the Contrave® brand and false advertising using the same, because such use is likely to: (1) cause confusion as to the affiliation, connection, association, origin, sponsorship, and/or approval of Defendant’s goods and services with those of Plaintiffs; and (2) mislead consumers

1 into believing that the material characteristics of Defendant's weight loss products are the same or
2 equivalent to Contrave®. These actions constitute trademark infringement, false designation of
3 origin, false advertising, and unfair competition in violation of Sections 32 and 43(a) of the
4 Lanham Act (15 U.S.C. §§ 1114 and 1125(a)) and California Business and Professions Code
5 §§ 17200 and 17500 et seq.

6 **PARTIES**

7 **Plaintiffs**

8 2. Plaintiff, Currax, is a corporation organized and existing under the laws of the State
9 of Delaware, having a principal place of business located at 155 Franklin Road, Suite 450,
10 Brentwood, Tennessee 37027.

11 3. Plaintiff, Nalpropion, is a corporation organized and existing under the laws of the
12 State of Delaware, having a principal place of business located at 9171 Towne Centre Drive, Suite
13 270, San Diego, CA 92122.

14 4. Plaintiffs are in the business of providing patient-first pharmaceutical services
15 focused on the number one and number two causes of preventable death in the United States:
16 smoking and obesity.

17 5. Plaintiff, Nalpropion, is the owner of the Contrave® Trademarks (as defined
18 herein), and Plaintiff Currax is the exclusive manufacturer and distributor of the FDA-approved
19 weight-loss medication Contrave®, among other products and services.

20 6. Plaintiffs' Contrave® brand enjoys a valuable reputation and enormous goodwill
21 in the weight loss industry. For over eight years, Contrave® Trademarks have been used as source
22 identifiers in commerce in connection with weight loss products.

23 **Defendant**

24 7. Defendant, Found, is a Delaware corporation with a principal place of business
25 located in San Francisco, California.

26 8. Found describes itself as the largest weight loss clinic in the United States.

27 9. Defendant is in fact an online telemedicine provider focused on weight
28 management.

1 10. Found's business, among other things, involves selling subscriptions to an online
2 weight loss program providing nutritional tips, lifestyle coaching, and medication.

3 11. Upon information and belief in marketing its program, Found uses products that
4 Found and its agents describe as Contrave®, equivalent to Contrave®, or a Contrave® generic.

5 **JURISDICTION**

6 12. This court has subject matter jurisdiction over Plaintiffs' Lanham Act claims under
7 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction over the state
8 law claims pursuant to 28 U.S.C. § 1367, as those claims are part of the same case or controversy
9 as the federal claims alleged herein.

10 13. Personal jurisdiction is proper in this judicial district because Defendant's principal
11 place of business is in the state of California.

12 14. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
13 § 1391(b)(3).

14 **FACTS**

15 **Plaintiffs' Contrave® Weight Loss Product**

16 15. Contrave® is an FDA-approved prescription weight-loss medication for use in
17 adults with a body mass index (BMI) of 30 kg/m² or greater, or adults with a BMI of 27 kg/m² or
18 greater with at least one weight-related medical problem such as high blood pressure, high
19 cholesterol, or type 2 diabetes.

20 16. Contrave® works by targeting two areas of the brain that cause hunger and
21 cravings. The first, the hunger center of the brain (hypothalamus) can increase hunger, telling you
22 to eat again or eat more. The second, the mesolimbic circuit or reward system of the brain, can
23 create cravings that seem uncontrollable even when you are not hungry.

24 17. Contrave® has been studied and approved for efficacy and safety in several clinical
25 trials. Three different clinical studies showed that patients taking Contrave®, along with diet and
26 exercise, lost 2x-4x more weight than with diet and exercise alone. Contrave® is in fact the only
27 combination of Naltrexone and Bupropion that has passed any clinical trials for weight loss safety
28 and efficacy and the only one approved by the FDA for such use.

18. Contrave's® proven safety and efficacy has helped it become the #1 branded prescription oral non-DEA-controlled weight loss medication.¹

19. Contrave® is a single tablet extended-release combination of 90 mg of Bupropion HCl and 8 mg of Naltrexone HCl that together reduce hunger and control cravings to help people lose weight and keep it off.

20. Naltrexone and Bupropion are available separately in different strengths for different indications. Individually, Naltrexone is an opioid antagonist approved to treat alcohol or opioid use disorders. Individually, Bupropion is used to treat depression, seasonal affective disorder, and smoking cessation.

21. Bupropion is not available individually in the same 90 mg dosage strength that each Contrave® tablet contains. Naltrexone is not available individually in the same 8 mg dosage strength that each Contrave® tablet contains. Nor is Naltrexone available individually as a sustained-release tablet. Individual Naltrexone tablets thus do not have the same release profile as Contrave®.

Contrave® Trademarks

22. Plaintiffs have built a longstanding reputation in the healthcare industry for producing safe, quality, and effective medications for treating sleeping disorders, migraines, and obesity.

23. In the weight management industry, Plaintiffs have been particularly successful in building their branded weight loss medication, Contrave®, to become the #1 branded prescription oral non-DEA-controlled weight loss medication.

24. As a result of Plaintiffs' longstanding efforts of investing in research, development, testing, clinical trials, and the FDA approval process, Contrave® now stands as the only FDA approved prescription medication combining Naltrexone and Bupropion for weight loss.

¹ Based on the number of prescription fills for a brand name weight-loss drug in the IQVIA database July 2021-June 2022

25. Plaintiffs' effort has not gone unnoticed. The Contrave® brand is well known in the weight management community and has earned a strong customer base with its reputation for safety and efficacy.

26. To protect the investment, Plaintiffs have acquired trademarks covering pharmaceutical products and services for the treatment of obesity, collectively referenced herein as the ("Contrave® Trademarks"). True and correct copies of the Contrave® Trademarks and relevant assignments are attached within Exhibit A.

27. The following Contrave® Trademarks protect Plaintiffs' product:

Trademark Registration No.	Trademark Description	Goods and/or Services	First Use in Commerce Date
3,393,576	CONTRA VE (standard character mark)	Pharmaceutical preparation for treatment of obesity	10/02/2007
5,181,874	CONTRA VE (word mark)	Pharmaceutical preparation for treatment of obesity; printed materials concerning weight management; medical information services in the field of weight management	09/2014
5,586,961	GET CONTRA VE NOW (word mark)	Online pharmaceutical advice	12/14/2016

28. One or more of the Contrave® Trademarks have appeared continuously on all authentic Contrave® medications sold by Plaintiffs and in all advertisements and promotions concerning the same.

29. Because of Contrave's® longstanding popularity, singular position as the only FDA approved prescription drug in its category, and Plaintiffs' longstanding extensive use of the

Contrave® Trademarks on goods and services of superior quality, Plaintiffs have developed substantial goodwill and an enviable reputation as the exclusive source of Contrave®.

30. The Contrave® Trademarks are entitled to the highest level of protection under U.S. law.

31. An example of the Contrave® Trademarks appearing in the marketplace can be found on its website², including within the domain itself, and on its product labeling as pictured below:



Defendant's Telemedicine Business

32. The Defendant owns and operates the self-described largest weight loss clinic in the United States.

33. Upon information and belief, the Defendant is in fact an online telemedicine provider focused on weight management. See https://support.joinfound.com/test-article-2-HylZ7o_Bd.

34. The Defendant's business model involves a subscription service where users sign up for a membership to the platform for a recurring fee that varies depending on the program and commitment length of the membership. See https://support.joinfound.com/en_us/what-is-the-cost-of-the-program-SkkeUeYc.

35. Defendant describes its services as including "online consultations with a board-certified practitioner to evaluate and manage the addition of medications to address weight at the

² <https://contrave.com/>

cellular level; guided programming, recipes, and health articles designed by behavioral health experts and registered dietitians; as well as access to a private community.” See https://support.joinfound.com/test-article-2-HylZ7o_Bd.

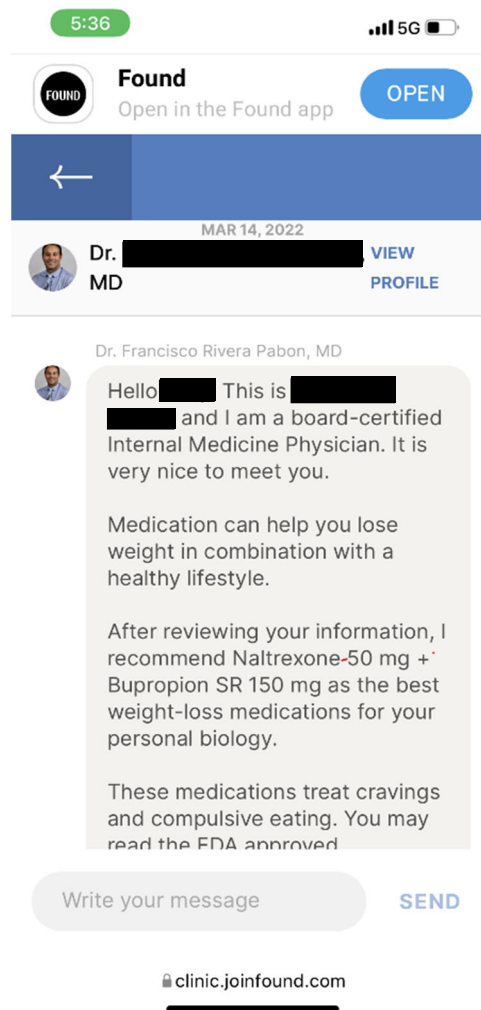
36. Upon information and belief, one of the “medications to address weight at the cellular level” prescribed by Defendant is one 50 mg tablet of Naltrexone with a separate 150 mg sustained-release tablet of Bupropion (together the “False Generic”).

37. The following table summarizes some of the differences between Contrave® and Defendant’s False Generic:

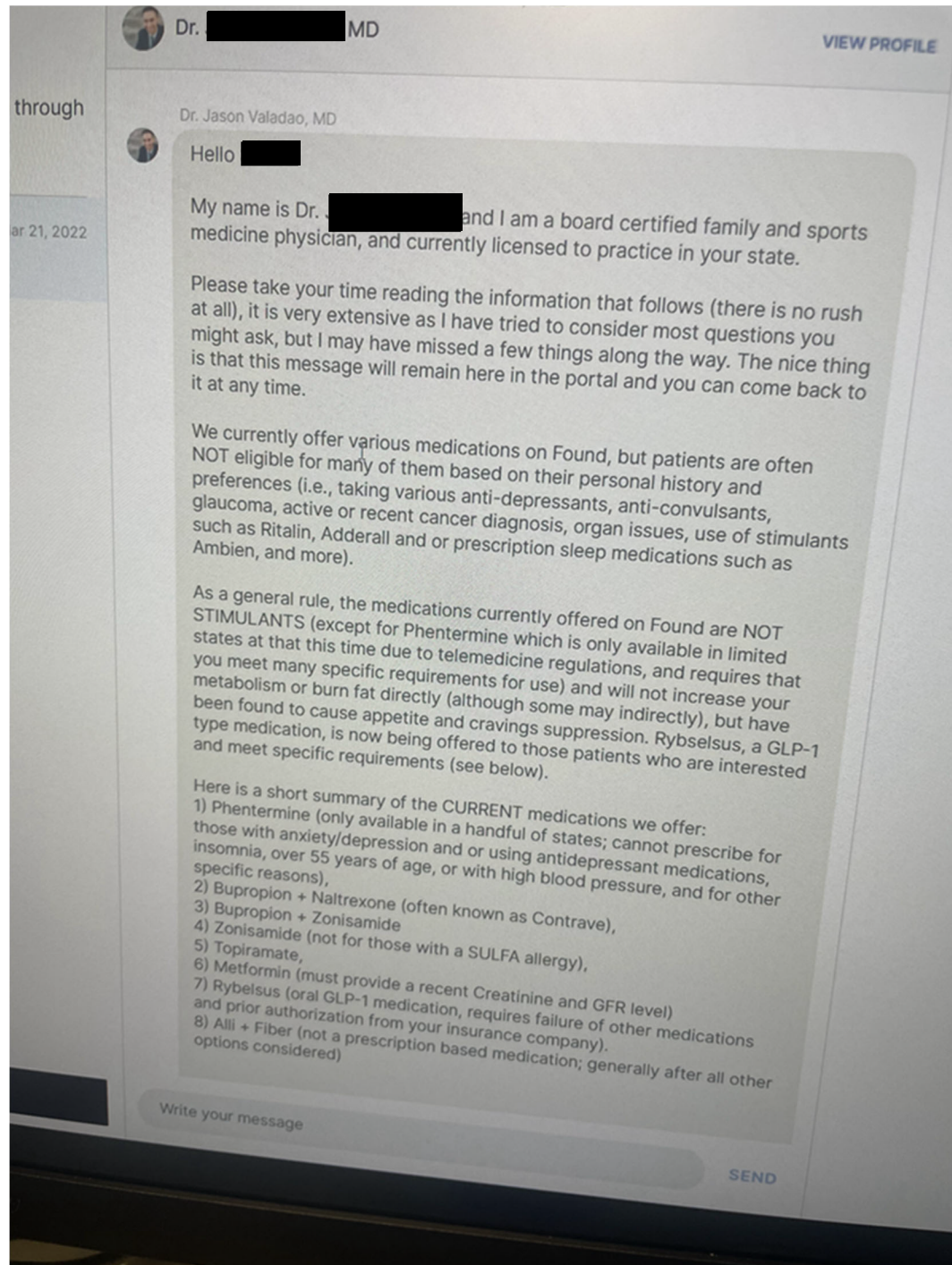
Characteristic	Contrave®	Defendant’s False Generic
90 mg of Bupropion per tablet	Yes	No
8 mg of Naltrexone per tablet	Yes	No
Sustained-release Naltrexone	Yes	No
Single tablet combining Bupropion and Naltrexone	Yes	No
Dosing schedule does not require splitting tablets	Yes	No
Dosing schedule specifies morning and evening doses	Yes	No
90 mg total daily dose of Bupropion during week 1	Yes	No
8 mg total daily dose of Naltrexone during week 1	Yes	No
180 mg total daily dose of Bupropion during week 2	Yes	No
16 mg total daily dose of Naltrexone during week 2	Yes	No
270 mg total daily dose of Bupropion during week 3	Yes	No
24 mg total daily dose of Naltrexone during week 3	Yes	No
360 mg total daily dose of Bupropion during weeks 4+	Yes	No
32 mg total daily dose of Naltrexone during weeks 4+	Yes	No
Supported by clinical study for prescribed indication	Yes	No
FDA approved for prescribed indication	Yes	No

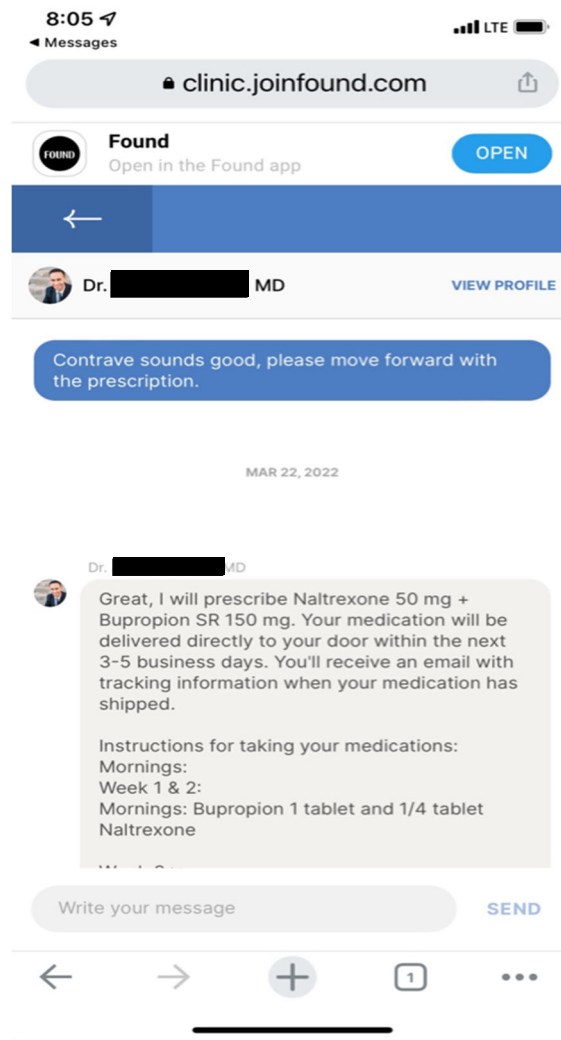
38. From February-June 2022, Plaintiffs hired investigators to sign up for Found's services and collect information concerning Defendant's suspected unlawful activities. These investigators recorded multiple instances of Defendant's prescribing the False Generic for weight loss:

- March 14, 2022 – Found Medical Provider 1 prescribes Plaintiffs' Investigator 1 the False Generic:



- March 22, 2022 – Found Medical Provider 2 prescribes Plaintiffs' Investigator 2 the False Generic:





- April 13, 2022 – Found Medical Provider 3 prescribes Plaintiffs’ Investigator 3 the False Generic:

Medication can help you lose weight in combination with a healthy lifestyle.

After reviewing your information, I recommend Naltrexone 50 mg + Bupropion SR 150 mg as the best weight-loss medications for you.

These medications treat cravings and compulsive eating. You may read the FDA approved naltrexone for opioid and alcohol use disorders, and bupropion for depression and tobacco cessation. I'm prescribing them for weight loss because there is substantial evidence supporting they are effective and safe for this use.

As a safety measure, could you please reconfirm with me here if you have any history of seizures, suicidal thoughts, heart arrhythmias, uncontrolled high blood pressure, or are currently taking or recently have taken any prescription narcotics/opioids or monoamine oxidase inhibitors (MAOIs). If not, do you want to try Naltrexone 50mg + Bupropion SR 150mg?

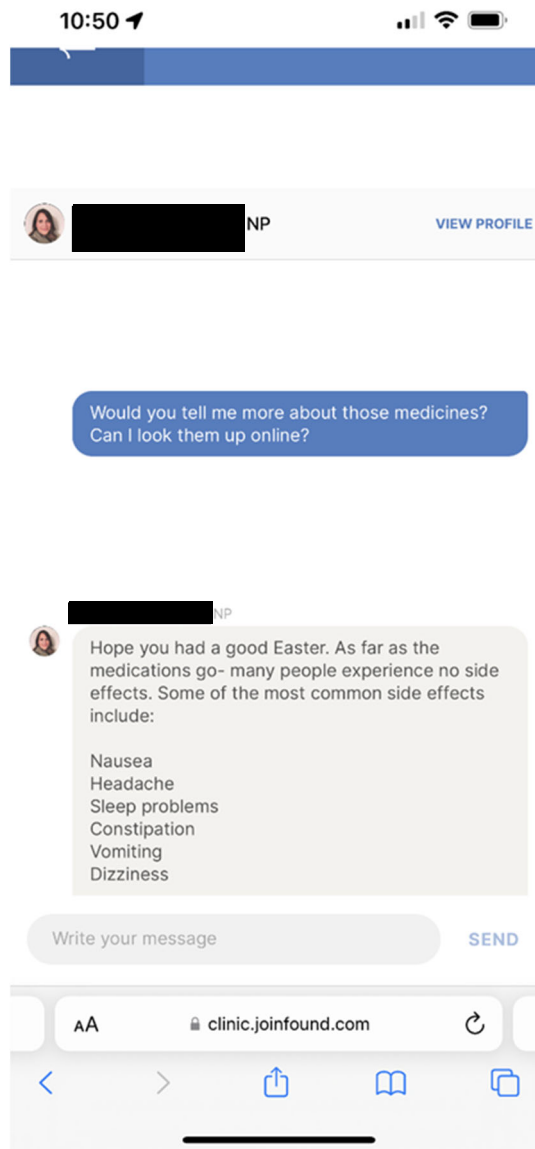
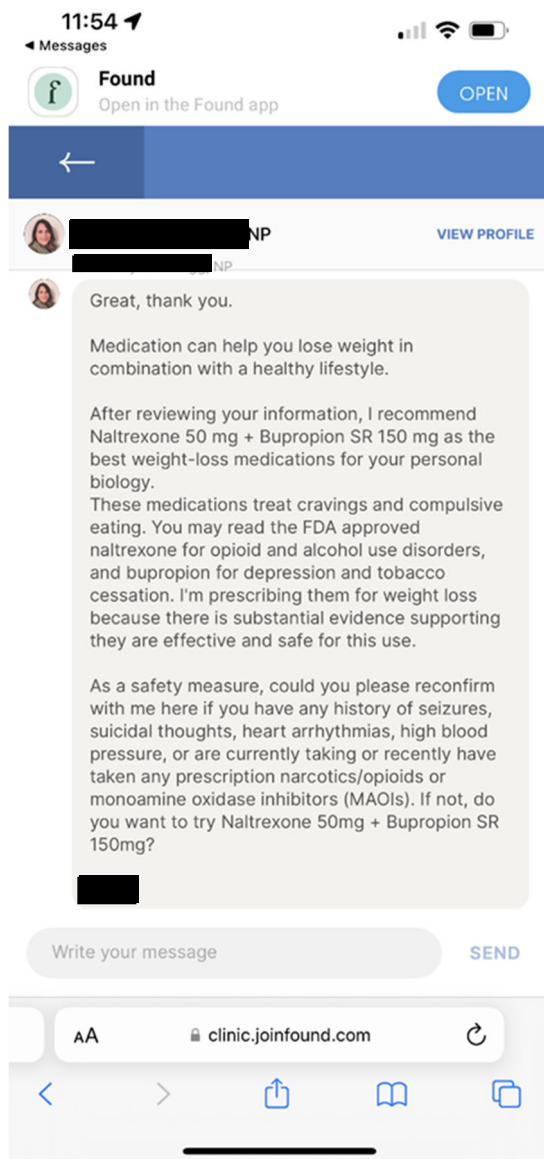
I don't have any of those problems, but I'm a little confused by what you say. I googled what you said and CONTRAVE came up on the search. Is that what this is? some of the reviews are good but some are not. what has been your experience? I understand people have different responses, just want to know your personal experience with people like me. I put on 30 pounds with COVID and I need to get it off!!!

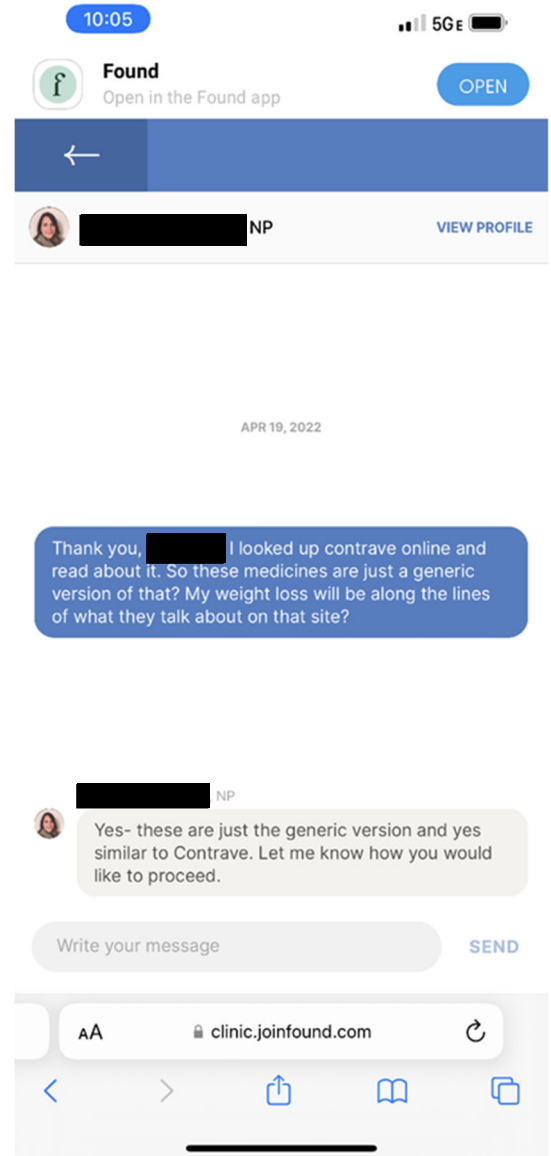
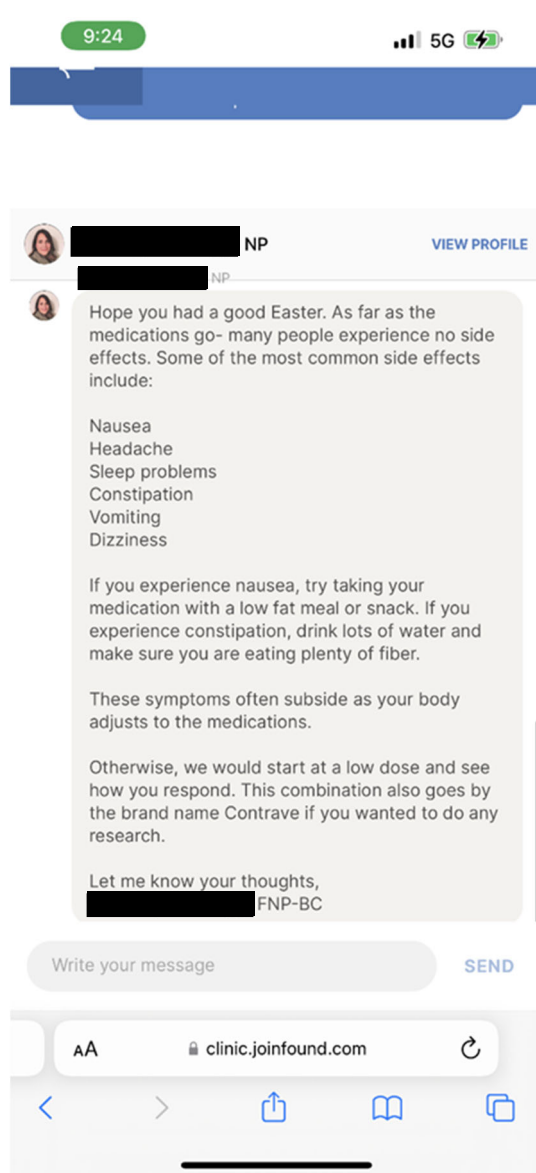
APR 13, 2022

I don't have any of those problems, but I'm a little confused by what you say. I googled what you said and CONTRAVE came up on the search. Is that what this is? some of the reviews are good but some are not. what has been your experience? I understand people have different responses, just want to know your personal experience with people like me. I put on 30 pounds with COVID and I need to get it off!!!

Like you said, everyone is very different and responds differently. Weight loss has a lot of factors including lifestyle changes. If someone is on medication but doesn't make any changes or sometimes eats worse because they think the medication will do all the work, then they don't make progress. Others that incorporate lifestyle changes in with medication have a great outcome. Yes, this is generic for Contrave

- April 13, 2022 – Found Medical Provider 4 prescribes Plaintiffs’ Investigator 4 the False Generic





39. Upon information and belief, and as evidenced from the screenshots of the above correspondence, each of these medical professionals were prescribing the False Generic within the messaging system of Defendant's subscription service platform.

40. Upon information and belief, and as evidenced from the screenshots of the above correspondence, each of these medical professionals were prescribing the False Generic on behalf of Defendant and its business.

Defendant's Unlawful Activity

41. Defendant has been illegally infringing on the Contrave® Trademarks to misrepresent its False Generic as Contrave®, a Contrave® equivalent, or a Contrave® generic.

42. Upon information and belief, Defendant has been consistently advertising to consumers in its subscription program communications that Found's False Generic is Contrave®, a Contrave® equivalent, or a Contrave® generic.

43. Plaintiffs' investigators also recorded multiple instances of Defendant's unlawful infringement of the Contrave® Trademarks and its misrepresentations in adverting its False Generic as Contrave®, a Contrave® equivalent, or a Contrave® generic in consumer communications:

- March 14, 2022 – Found Medical Provider 1 indicates to Plaintiffs' Investigator 1 that she can “obtain more information about this [False Generic] by doing a search for Contrave, the FDA approved weight loss therapy having both medication in one tablet.” *See* Exhibit B at 1.

44. Defendant's statement that a consumer could obtain more information about its False Generic by comparing information found in a search for Contrave® is unambiguously false and misleading.

45. Contrave® is the only combination and form of Bupropion and Naltrexone that is FDA approved for weight loss. Contrave® is only available in a one tablet, extended released, fixed dose combination of 90 mg of Bupropion HCl and 8 mg of Naltrexone HCl.

46. Upon information and belief, Defendant's False Generic is prescribed in a two-tablet format of 50 mg of Naltrexone separate from 150 mg of sustained-release Bupropion, with both the Naltrexone tablet and Bupropion tablet to be taken together.

47. Given the different formats, different dosages, and different approvals, it is grossly misleading to indicate to any customer that the safety and efficacy information found concerning Contrave® would be comparable to Defendant's False Generic.

48. Furthermore, Plaintiffs' investigators obtained several samples of Defendant's False Generic, and it was rigorously tested using Plaintiffs' standard quality control tests for Contrave®. The False generic failed every test:

- Failed "Identity Test":
 - It is not the one tablet fixed dose combination of Contrave®, as the False Generic is prescribed as two separate monocomponents of Naltrexone and Bupropion
- Failed "Dissolution Analysis":
 - The product failed percent dissolution at the half hour and full hour analysis points. Dissolution rates are a critical analytical parameter for oral dosage form pharmaceutical products and are correlated with absorption rates.
- Failed "Strength Analysis":
 - The False Generic monocomponents of Naltrexone and Bupropion are prescribed in different dosage strengths than are found in Contrave®.
- Failed "Impurities Analysis":
 - Unknown impurities were identified in the samples analyzed; these impurities are not identified nor present in Contrave®.

49. Therefore, Defendant's statements misrepresenting that information regarding Contrave® is informative as it concerns the False Generic, is demonstrably deceptive practically and scientifically.

50. Upon information and belief, Defendant uses the Contrave® Trademarks in Paragraph 45, and statements such as these, in communications to consumers to confuse them into believing Found is offering Contrave®, a Contrave® equivalent, or a Contrave® generic for sale.

51. Upon information and belief, Defendant uses the Contrave® Trademarks in such statements in communications to consumers to confuse them into believing that Defendant's False Generic originates from, or is affiliated with, Plaintiffs and their Contrave® product.

52. Upon information and belief, Defendant uses the Contrave® Trademarks in such statements in its advertising communications to consumers to mislead them into believing that Defendant's False Generic is Contrave®, a Contrave® equivalent, or a Contrave® generic.

53. Defendant's deceptive statements do not stop at simply implying a comparison between Contrave® and its False Generic, but go so far as to misrepresent that the False Generic is the same as Contrave:

- March 22, 2022 – Found Medical Provider 2 indicates to Plaintiffs' Investigator 2 that one of the medications offered by Defendant is “Bupropion + Naltrexone (often known as Contrave)” See Exhibit B at 2.

54. Defendant's statement here is directly deceptive to consumers for all the reasons stated above, but also because Contrave® is a branded product only sold by Plaintiffs.

55. Defendant's statement directly represents to consumers that Found offers Contrave®, which is false.

56. Upon information and belief, Defendant uses the Contrave® Trademarks in this statement, and statements such as these, in communications to consumers to confuse them into believing Found is offering Contrave® for sale.

57. Upon information and belief, Defendant uses the Contrave® Trademarks in such statements in communications to consumers to confuse them into believing that Defendant's False Generic originates from, or is affiliated with, Plaintiffs and their Contrave® product.

58. Upon information and belief, Defendant uses the Contrave® Trademarks in such statements in its advertising communications to consumers to mislead them into believing that Defendant's False Generic is Contrave®, a Contrave® equivalent, or a Contrave® generic.

59. Upon information and belief, Defendant also represents in advertising communications to customers that its False Generic is a Contrave® generic:

- April 13, 2022 – Found Medical Provider 3 responds to confusion from Plaintiffs' Investigator 3 on whether he is receiving Contrave or not by stating: “Yes, this is generic for Contrave.” See Exhibit B at 3.

- 1 • April 13, 2022 – Found Medical Provider 4 instructs Investigator 4 that the
- 2 False Generic “combination also goes by the brand name Contrave if you
- 3 wanted to do any research” *See id.* at 4-5.
- 4 ○ Investigator 4 responds, “I looked up contrave online and read about it.
- 5 So these medicines are just a generic version of that? My weight loss will
- 6 be along the lines of what they talk about that site?”
- 7 ▪ Nurse Practitioner Kimberly Anderegg responds, “Yes – these are
- 8 just the generic version and yes similar to Contrave.”

9 60. Defendant’s statement here is directly deceptive to consumers for all the reasons
10 stated above, but also because Contrave® has no generic version.

11 61. Generic drugs are approved only after a rigorous review by the FDA and after a set
12 period of time that the brand product has been on the market exclusively. This is because new
13 drugs, like other new products, are usually protected by patents that prohibit others from making
14 and selling copies of the same drug.³

15 62. Plaintiffs have patent protection for Contrave® until at least 2034 and therefore
16 there can be no approved generic Contrave® in the United States during this time.

17 63. Further, in order to become an FDA approved generic, Defendant would have to
18 follow the appropriate FDA approval process put in place for the safety of patients. This process
19 would require Defendant to perform required testing/studies and to submit an abbreviated new
20 drug application (ANDA) to FDA for approval to market a generic drug that is the same as (or
21 bioequivalent to as defined by FDA) the brand product.

22 64. An ANDA must show the generic medicine is equivalent to the brand in the
23 following ways:

- 24 • The active ingredient is the same as that of the brand-name drug/innovator
- 25 drug;
- 26 • The generic medicine is the same strength;

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28 ³ <https://www.fda.gov/drugs/frequently-asked-questions-popular-topics/generic-drugs-questions-answers#:~:text=Generic%20drugs%20are%20approved%20only,copies%20of%20the%20same%20drug>

- The medicine is the same type of product (such as a tablet or an injectable);
- The medicine has the same route of administration (such as oral or topical);
- It has the same use indications;
- The inactive ingredients of the medicine are acceptable;
- It lasts for at least the same amount of time;
- It is manufactured under the same strict standards as the brand-name medicine;
- The container in which the medicine will be shipped and sold is appropriate;
- and
- The label is the same as the brand-name medicine's label.

65. Upon information and belief, Defendant has not submitted, nor has the FDA evaluated or approved, any ANDA for the False Generic to become a Contrave® generic.

66. Upon information and belief, Defendant would not be approved even if it were to submit an ANDA for the False Generic to become a generic Contrave® because it could not satisfy several of the above required factors, including at least that the generic medicine: (1) is the same strength; (2) is the same type of product; and (3) lasts for at least the same amount of time.

67. The following table again summarizes some of the differences between Contrave® and Defendant's False Generic:

<u>Characteristic</u>	<u>Contrave®</u>	<u>Defendant's False Generic</u>
90 mg of Bupropion per tablet	Yes	No
8 mg of Naltrexone per tablet	Yes	No
Sustained-release Naltrexone	Yes	No
Single tablet combining Bupropion and Naltrexone	Yes	No
Does not require splitting tablets	Yes	No
Dosing schedule specifying morning and evening doses	Yes	No
90 mg total daily dose of Bupropion during week 1	Yes	No
8 mg total daily dose of Naltrexone during week 1	Yes	No

180 mg total daily dose of Bupropion during week 2	Yes	No
16 mg total daily dose of Naltrexone during week 2	Yes	No
270 mg total daily dose of Bupropion during week 3	Yes	No
24 mg total daily dose of Naltrexone during week 3	Yes	No
360 mg total daily dose of Bupropion during weeks 4+	Yes	No
32 mg total daily dose of Naltrexone during weeks 4+	Yes	No
Supported by clinical study for prescribed indication	Yes	No
FDA approved for prescribed indication	Yes	No

68. Defendant's statements directly represent to consumers that Found offers a Contrave® generic, which is false.

69. Defendant's statement directly represents that Defendant's False Generic will have the same efficacy as Contrave®, which, upon information and belief, is unsubstantiated by any testing, clinical trials, or FDA approvals.

70. Upon information and belief, Defendant uses the Contrave® Trademarks in this statement, and statements such as these, in communications to consumers to confuse them into believing Found is offering a Contrave® generic for sale.

71. Upon information and belief, Defendant uses the Contrave® Trademarks in this statement, and statements such as these, in communications to consumers to confuse them into believing that Defendant's False Generic originates from, or is affiliated with, Plaintiffs and their Contrave® product.

72. Upon information and belief, Defendant uses the Contrave® Trademarks in this statement, and statement such as these, in its advertising communications to consumers to mislead them into believing that Defendant's False Generic is Contrave®, a Contrave® equivalent, or a Contrave® generic.

73. Defendant's misrepresentations that its False Generic is Contrave®, a Contrave® equivalent, or a Contrave® generic are unambiguously deceptive and literally false.

1 74. Defendant's misrepresentations concerning its False Generic are also misleading,
2 even if not literally false, as a significant portion of reasonable weight loss consumers are likely to
3 be deceived into believing that Defendant's False Generic is Contrave®, a Contrave® equivalent,
4 or a Contrave® generic.

5 75. Defendant's claims that its False Generic is Contrave®, a Contrave® equivalent,
6 or a Contrave® generic is material to consumers' purchasing decisions because the safety and
7 effectiveness of Contrave®, which is represented by its FDA approval, are desirable features for
8 customers and provides Plaintiffs a competitive advantage.

9 76. Upon information and belief, Defendant has made such claims in communications
10 to consumer across the country in interstate commerce.

11 77. Upon information and belief, the above instances of trademark infringement and
12 false advertising represent a pattern and practice of Defendant's advertising of its False Generic to
13 consumers.

14 78. Upon information and belief, Found compounds its misleading statements by
15 advertising its False Generic using clinical study results for Contrave®:
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found

Product Fact Sheet

- We deliver the best and most cost effective combinations to serve every patient based on their biology & our extensive research
- We've invested in behavior change analytics to deeply understanding the obstacles that prevent members from meeting and exceeding goals
- We support members with coaching and community to increase engagement and sustain health goals

Found exceeds clinical expectations for each medication offered

Drug Therapy	Clinical Studies Patients	Found Members
Zonisamide (Zonegran)	6.8% of their total body weight lost after 12 months	10.9% of their total body weight lost after 12 months
Bupropion-Zonisamide	7.5% of their total body weight lost after 6 months	9.9% of their total body weight lost after 6 months
Naltrexone/Bupropion	9.3% of their total body weight lost after 12 months	10.5% of their total body weight lost after 12 months
Topiramate (Topamax)	6.3% of their total body weight lost after 12 months	8.3% of their total body weight lost after 12 months
Metformin	2.7% of their total body weight lost after 24 months	8.9% of their total body weight lost after 12 months

70% Monthly engagement rate

5% weight loss at month 3 by 43% of members

10% weight loss in year 1 by 47% of members

80% CSAT Members feel supported from Found team

79. The above image was taken at the San Diego Obesity Week in November 2022. Defendant advertises that it offers the medication “Naltrexone/Bupropion” and that “Clinical Studies Patients” showed they lost “9.3% of their total body weight...after 12 months.”

80. But, the only clinical studies in the FDA database for a combination of Naltrexone and Bupropion for weight loss are for Contrave® and not the False Generic. The “9.3%” result referenced in Defendant’s advertising is identical to the results of a study of for Contrave®.

81. Such a reference is false and misleading because, for all the reasons stated above, the False Generic is not equivalent to Contrave® and therefore cannot rely on Contrave® clinical

1 trials as an accurate representation to consumers of the False Generic's expected effect. Moreover,
 2 upon information and belief, Defendant did not perform any clinical study with proper controls
 3 and statistical analyses, as would be required to compare the efficacy of the False Generic with
 4 Contrave®.

5 82. Upon information and belief, consumers have been confused and deceived, and are
 6 likely to continue to be confused and deceived, by: (1) Defendant's misuse of the Contrave®
 7 Trademarks; and (2) Defendant's misrepresentations that its False Generic is Contrave®, a
 8 Contrave® equivalent, or a Contrave® generic.

9 83. Plaintiffs have recently discovered online commentary indicating that consumers
 10 have been confused and deceived by Defendant's unlawful activity for years:

- 11 • Circa February 2020 Post Re: "***Generic Contrave***"
 - 12 ○ I started a program called Torch where you do an online consultation, a
 13 doctor prescribes medication, and they assign a coach you can text
 14 whenever and they check in on you every few days. The medication I am
 15 prescribed is ***150mg Bupropion SR and 25mg Naltrexone***.⁴
- 16 • December 10, 2021 Post on GoWellness Blog by Courtney D'Angelo, MS,
 17 RD Re: Found Weight Loss Medication and Coaching (Review by a
 18 Dietitian)⁵
 - 19 ○ This review not only states in no uncertain terms that Found carries
 20 Contrave® as part of its medications available in Found's subscription
 21 service, but also includes a picture of actual Contrave® branded packaging
 22 to show readers what Found offers:

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27
28 ⁴ https://www.reddit.com/r/Contrave/comments/gbhng/generic_contrave_torch/ (emphasis added)

⁵ <https://www.gowellnessco.com/found-weight-loss-medication-coaching/>



- January 1, 2023 Blog Article on Pharmacist.org Re: Found Rx Weight Loss Review: Is A Prescription Worth It?⁶
 - “The doctors working for Found are able to prescribe the same weight loss medications as your primary care physician. Medications like Orlistat, Qsymia, Contrave, and numerous others are available if you qualify for them.”

84. Defendant’s conduct described herein constitutes trademark infringement, false designation of origin, false advertising, and a violation of California state law.

Defendant’s Conduct Is Willful and Intended to Harm Plaintiffs

85. Defendant’s conduct was undertaken willfully, with the intent to mislead consumers and harm Plaintiffs.

86. On February 21, 2020, Plaintiffs’ Associate General Counsel sent a letter to Defendant notifying them that they had just recently become aware that Defendant was marketing and prescribing two drugs – naltrexone 50 mg and bupropion SR 150 mg – as the “generic name equivalent of Contrave.” *See* Exhibit C.

87. In that letter, Plaintiffs notified Defendant that such statements were false, misleading, and a potential violation of state and federal advertising law. *See id.*

⁶ <https://www.pharmacists.org/found-rx-weight-loss-review/> (emphasis added.)

1 88. On or around March 12, 2020, Defendant responded to Plaintiffs' February 21,
2 2020 letter stating that Found had "reviewed this matter internally" and "it was an isolated
3 incident." *See* Exhibit D. Defendant went on to say that it had instructed its employees to avoid
4 such representations in the future and that Defendant did "not expect a recurrence." *See id.*

5 89. On October 6, 2021, Plaintiffs' and Defendant's leadership held a meeting to
6 discuss a potential partnership between Defendant and Plaintiffs.

7 90. Despite Defendant's representations in March 2020, Defendant's new CEO, Sarah
8 Jones Simmer, indicated in this meeting that Defendant had patients "who want Contrave, many
9 patients reach out and request Contrave®, but we can only give them generic Contrave."

10 91. Plaintiffs' CEO, George Hampton, informed Ms. Simmer at that time that there was
11 no such thing as generic Contrave®.

12 92. Mr. Hampton warned Ms. Simmer that distributing the False Generic as a
13 Contrave® generic could cause Plaintiffs to pursue Defendant for misrepresentation and
14 intellectual property infringement.

15 93. It was after this meeting that Plaintiffs initiated the above-described investigation
16 and discovered that Defendant had continued its unlawful use of the Contrave® Trademarks and
17 its misrepresentations that Defendant's False Generic was Contrave®, a Contrave® equivalent, or
18 a Contrave® generic.

19 94. Defendant has been on notice that the actions described above violated federal and
20 state law since it received Plaintiffs' cease and desist letter in February 2020.

21 95. Plaintiffs discovered that Defendant continued its unlawful activities in
22 October 2021, when the Found CEO admitted that it was selling the False Generic as a Contrave®
23 generic.

24 96. Defendant was once again warned at that time that its actions constituted
25 misrepresentation and intellectual property infringement in violation of the law.

26 97. Given the repeated warnings that Defendant had that it was violating Plaintiffs'
27 rights and the law, its conduct could only be willful.
28

Irreparable Harm to Plaintiffs

98. Defendant's conduct constitutes trademark infringement and false designation of origin, because, by referring to its False Generic as Contrave®, a Contrave® equivalent, or a Contrave® generic, Defendant deprives Plaintiffs of the advertising value of its Contrave® Trademarks and of the goodwill that would otherwise stem from the public's knowledge that Plaintiffs are the only source of the authentic FDA approved Contrave® medication.

99. Defendant's false advertising of its False Generic as Contrave®, Contrave® equivalent, or a Contrave® generic also irreparably harms Plaintiffs as it communicates that Contrave®, a Contrave® equivalent, or a Contrave® generic is available in the marketplace outside of Plaintiffs' product and thereby deprives Plaintiffs of a legitimate competitive advantage by reducing consumers' incentive to seek out Contrave®. Instead, misled consumers use the False Generic, ultimately reducing the goodwill in the Contrave® brand.

100. Moreover, upon information and belief, Defendant's False Generic is less effective and causes more side effects than Contrave®, because, for example, Defendant's False Generic does not have the same dosage strengths or release profile (lacking sustained-release Naltrexone) as Contrave®. Upon information and belief, patients who receive Defendant's False Generic instead of Contrave® will therefore be less likely to take Contrave® and recommend Contrave® to others, thus irreparably harming Plaintiffs.

101. As a direct and proximate result of the foregoing, Plaintiffs have suffered irreparable harm to their brand value, reputation, and goodwill and unless Defendant's conduct is enjoined, the harm will continue and increase. Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement under 15 U.S.C. § 1114)

103. Plaintiffs reallege and incorporate by reference each of the above paragraphs as though fully set forth herein.

104. Nalpropion owns a valid and protectable federal trademark registration for the Contrave® Trademarks on the Principal Register, as shown at Exhibit A attached hereto.

1 105. Defendant's conduct alleged herein, including its promotion of its products as
2 equivalent to, or generic versions of, Contrave®, constitutes use of Plaintiffs' federally registered
3 Contrave® Trademarks in connection with advertising or sale of unauthorized goods and services
4 in commerce. This conduct creates a likelihood of confusion, mistake, and/or deception as to the
5 affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship,
6 or approval of Defendant's products by Plaintiffs. Defendant's conduct is likely to induce
7 consumers to believe, contrary to fact, that Defendant's products are sponsored, endorsed,
8 approved by, or connected with Plaintiffs.

9 106. Defendant's conduct is without Plaintiffs' permission or authority. As described
10 above, Defendant had actual knowledge of Plaintiffs' prior and senior rights in the Contrave®
11 Trademarks when they continued to use the Contrave® Trademarks to market and sell Found's
12 products. As a result, Defendant has committed its infringement with full knowledge of Plaintiffs'
13 rights in the Contrave® Trademarks, and has willfully, deliberately, and maliciously engaged in
14 the described acts with an intent to injure Plaintiffs and to deceive the public.

15 107. Defendant's unauthorized use of the Contrave® Trademarks, or the reference to a
16 generic version of Contrave® that is confusingly similar to the Contrave® Trademarks, in
17 connection with and to identify Defendant's products, constitutes trademark infringement in
18 violation of 15 U.S.C. § 1114.

19 108. Upon information and belief, Defendant has profited or will profit from this
20 infringement.

21 109. This is an exceptional case under 15 U.S.C. § 1117(a).

22 110. Defendant's conduct has caused and likely will continue to cause damage to
23 Plaintiffs in an amount to be determined at trial and, unless enjoined, will continue to seriously
24 and irreparably impair further the value of the Contrave® brand, for which there is no adequate
25 remedy at law.

26 111. Because of Defendant's infringement, Plaintiffs have been irreparably harmed in
27 their business and will continue to suffer irreparable harm unless Defendant is enjoined from
28 infringing the Contrave® Trademarks.

112. In light of the foregoing, Plaintiffs are entitled to injunctive relief prohibiting Defendant from using the Contrave® Trademarks, or any mark confusingly similar to the Contrave® Trademarks, for any purpose, and to recover from Defendant all damages, including attorneys' fees, that Plaintiffs have sustained and will sustain as a result thereof, in an amount not yet known, but which circumstances warrant including the cost of this action pursuant to 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION

(Unfair Competition and False Designation of Origin under 15 U.S.C. § 1125(a))

113. Plaintiffs reallege and incorporate by reference each of the above paragraphs as though fully set forth herein.

114. Defendant's actions as alleged herein constitute false designations of origin in connection with the sale and advertising of unauthorized goods and services. This conduct creates a likelihood of confusion, mistake, or deception as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's products by Plaintiffs. Defendant's conduct is likely to induce customers to believe, contrary to fact, that the Defendant's products are sponsored, endorsed, approved by, or connected with Plaintiffs.

115. Defendant's conduct is without Plaintiffs' permission or authority. As described above, Defendant had actual knowledge of Plaintiffs' prior and senior rights in the Contrave® Trademarks when it continued to use the Contrave® Trademarks to market and sell Defendant's products. As a result, Defendant has falsely designated the origin of its False Generic with full knowledge of Plaintiffs' rights in the Contrave® Trademarks, and have willfully, deliberately, and maliciously engaged in the described acts with an intent to injure Plaintiffs and to deceive the public.

116. Defendant's unauthorized use of the Contrave® Trademark or the reference to generic version of Contrave® that is confusingly similar to the Contrave® Trademarks, in connection with and to identify Found's products, constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

125. Defendant's false and misleading statements of fact concerning the characteristics of its False Generic as being Contrave®, Contrave® equivalent, or a Contrave® generic are material and are likely to influence consumers' purchasing decisions.

126. To the extent it is being marketed as an alternative to Contrave®, the False Generic directly competes with Plaintiffs in the relevant market and Defendant's false advertising claims have actually deceived or tended to deceive a substantial number of consumers in that market.

127. Defendant's false and misleading advertising has caused and continues to cause irreparable injury to the public and to Plaintiffs' business, goodwill, and reputation, and Plaintiffs have no adequate remedy at law. Upon information and belief, Defendant's actions will continue if not enjoined.

128. As a direct and proximate result of Defendant's false and misleading advertising, Plaintiffs have incurred damages in an amount to be proven at trial. Such damages include, among other things, lost sales, harm to Plaintiffs' business reputation and goodwill, lost profits, and harm to the value and goodwill associated with the Contrave® Trademarks and brand.

129. Defendant knew, or by exercise of reasonable care should have known, that the above-described advertising claims are false and/or misleading and are likely to deceive the public. Accordingly, Defendant's actions were willful, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

FOURTH CAUSE OF ACTION

(Cal. Bus. Prof. Code 17200 et seq. (the "UCL"))

130. Plaintiffs reallege and incorporate by reference each of the above paragraphs as though fully set forth herein.

131. Defendant's conduct alleged herein constitutes false designation of origin under 15 U.S.C. § 1125(a)(1)(A). Defendant's conduct thus constitutes willful and deliberate unfair competition in wanton disregard of Plaintiffs' valuable intellectual property rights. Upon information and belief, Defendant has profited from this infringement.

132. Defendant's conduct alleged herein constitutes trademark infringement under 15 U.S.C. § 1114(a). Defendant's conduct thus constitutes willful and deliberate unfair

1 competition in wanton disregard of Plaintiffs' valuable intellectual property rights. Upon
2 information and belief, Defendant has profited from this infringement.

3 133. Defendant's conduct alleged herein constitutes false advertising under 15 U.S.C. §
4 1125(a)(1)(B). Defendant's conduct thus constitutes willful and deliberate unfair competition in
5 wanton disregard of Plaintiffs' right to have a competitive advantage by being the exclusive seller
6 of authentic Contrave®. Upon information and belief, Defendant has profited from its
7 misrepresentations.

8 134. Defendant's conduct has directly and proximately caused and will continue to cause
9 Plaintiffs substantial and irreparable injury, including customer confusion, injury to their
10 reputation, and diminution in value of their intellectual property and unless restrained, will
11 continue to seriously and irreparably impair further the value of Contrave® Trademarks, for which
12 there is no adequate remedy at law.

13 135. In light of the foregoing, Plaintiffs are entitled to an injunction under Cal. Bus. &
14 Prof. Code §§ 17200 et seq. restraining Defendant from engaging in further such unlawful conduct,
15 as well as any and all other relief available under Section 17200.

16 **FIFTH CAUSE OF ACTION**

17 **(Cal. Bus. Prof. Code §§ 17500 et seq. (the "FAL"))**

18 136. Plaintiffs reallege and incorporate by reference each and every allegation contained
19 in the above paragraphs as though fully set forth herein.

20 137. Defendant's false and misleading statements constitute false advertising in
21 violation of Cal. Bus. & Prof. Code §§ 17500 et seq.

22 138. Defendant's false and misleading statements of fact concerning the characteristics
23 of its False Generic as being Contrave®, Contrave® equivalent, or a Contrave® generic are
24 material and are likely to influence consumers' purchasing decisions.

25 139. To the extent it is being marketed as an alternative to Contrave®, the False Generic
26 directly competes with Plaintiffs in the relevant market and Defendant's false advertising claims
27 have actually deceived or tended to deceive a substantial number of consumers in that market.
28

140. Defendant's false and misleading advertising has caused and continues to cause irreparable injury to the public and to Plaintiffs' business, goodwill, and reputation and Plaintiffs have no adequate remedy at law. Upon information and belief, Defendant's actions will continue if not enjoined.

141. As a direct and proximate result of Defendant's false and misleading advertising, Plaintiffs have incurred damages in an amount to be proven at trial.

142. In light of the foregoing, Plaintiffs are entitled to an injunction under Cal. Bus. & Prof. Code §§ 17500 et seq. restraining Defendant from engaging in further such unlawful conduct, as well as any and all other relief available under Section 17500.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

1. For an injunction:

a. Pursuant to 15 U.S.C. § 1116, enjoining and restraining Defendant and its agents, affiliates, subsidiaries, parents, officers, directors, employees, assigns, and all persons in active concert or participation with them, from:

- i. directly or indirectly using the Contrave® Trademarks or any colorable imitation thereof or any mark confusingly similar thereto;
- ii. using or registering any trademark, service mark, trade or business name, domain name, social media username or handle, keyword, hashtag, vanity phone number, or attention-getting symbol that consists of or contains the Contrave® Trademarks or any colorable imitation thereof or any mark confusingly similar thereto; and
- iii. directly or indirectly making any statement that misrepresents any of Defendant's products, including, but not limited to the False Generic, as Contrave®, equivalent to Contrave®, or a Contrave® generic.

b. Pursuant to 15 U.S.C. § 1118, ordering that all advertisements, standard customer communications, promotional materials, and any and all other products or material using the Contrave® Trademarks, or any colorable imitation thereof, or any other designation confusingly similar thereto, be removed, made inaccessible, and destroyed, as appropriate.

2. For an order requiring Defendant to file with the Court and serve upon Plaintiffs within fifteen (15) days after issuance of any injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

3. For a judgment that:

- a. Defendant has violated Section 1114 of the Lanham Act;
- b. Defendant has violated Section 1125(a) of the Lanham Act as it relates to false advertising;
- c. Defendant has violated Section 1125(a) of the Lanham Act as it relates to false designation of origin;
- d. Defendant has violated Cal. Bus. & Prof. Code §§ 17200 and 17500 et seq; and
- e. Defendant has acted in bad faith, willfully, intentionally, and/or with reckless disregard to Plaintiffs' rights.

4. For an order awarding Plaintiffs:

- a. All profits derived by Defendant's wrongful acts complained of herein;
- b. All damages sustained by reason of Defendant's wrongful acts complained of herein;
- c. Plaintiffs' costs incurred in this action;
- d. Plaintiffs' reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a);
- e. Pre-judgment and post-judgment interest; and

f. For an order granting Plaintiffs such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on all claims and issues so triable.

Dated: March 3, 2023

Respectfully submitted,

/s/ John S. Worden

John S. Worden

VENABLE LLP

John S. Worden

jsworden@venable.com

101 California Street, Suite 3800

San Francisco, CA 94111

Phone: (415) 653-3750

Christopher P. Borello (Pro Hac Vice Forthcoming)

cborello@venable.com

1270 Avenue of Americas, 24th Floor

New York, NY 10020

Phone: (212) 307-5500

Fax: (212) 307-5598

Leonard L. Gordon (Pro Hac Vice Forthcoming)

lgordon@venable.com

William C. Lawrence (Pro Hac Vice Forthcoming)

wclawrence@venable.com

600 Massachusetts Ave., NW

Washington, D.C. 20001

Phone: (202) 344-4000

Fax: (202) 344-8300